

Notice of Allowability

Application No.

10/604,516

Examiner

Keith Hendricks

Applicant(s)

PHILLIPS ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to _____.
2. ☒ The allowed claim(s) is/are 1-83.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The claims are essentially directed to a chewing gum composition comprising a base, wherein the base comprises high molecular weight polyisobutylene (PIB), and wherein the base is essentially free of non-silica filler. Pages 8-9 of the instant specification expressly defines high molecular weight PIB as ranging "from about 200,000 daltons to about 600,000 daltons", wherein the preferred MW is about 400,000. Page 8 of the specification defines the phrase "essentially free of non-silica filler" as having levels "of about 0% to about 5% by weight of the chewing gum base", wherein it is preferably free of non-silica filler. It is further noted that "the amount of high molecular weight polyisobutylene present in the inventive chewing gum base ranges from about 5% to about 15% by weight of the chewing gum base" (pg. 9, specification).

The prior art discloses the use of polyisobutylene within gum bases, predominantly in the "low molecular weight" form. US PAT 3,984,574 (Comollo) discloses the production of a chewing gum with a base comprising PIB in either high or low MW. However, the reference states that "the low molecular weight typically has a weight of from 6000 to 12,000, and the high molecular weight has a weight typically of from 40,000 to 120,000." Thus, the "high molecular weight" PIB range is well below that of the instantly-claimed invention. Again, the instant claims provide for a chewing gum base comprising a high molecular weight PIB, which is clearly defined in the specification as ranging "from about 200,000 daltons to about 600,000 daltons." Therefore, the claimed invention is distinguished from that of the prior art, and patentably distinct therefrom.

Further, there was no teaching or suggestion in the art for one of ordinary skill to utilize a PIB with a molecular weight higher than that taught by Comollo. In fact, the general state of the prior art asserted that the use of increased MW PIB's made the resultant chewing gum tough, more elastic and thus more difficult to chew, therefore teaching away from the instantly-claimed invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Conclusion

Claims 1-83 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**KEITH HENDRICKS
PRIMARY EXAMINER**